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Attorneys for Plaintiffs
Planet Aid Inc. and Lisbeth Thomsen

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

PLANET AID INC.; and LISBETH
THOMSEN,

Plaintiffs,

v.

REVEAL, CENTER FOR
INVESTIGATIVE REPORTING; MATT
SMITH; and AMY WALTERS,

Defendants.

Case No. 17-cv-03695-JSC

**DECLARATION OF SAMUEL
ROSENTHAL IN OPPOSITION TO
MOTION TO STRIKE**

Judge: Hon. Maxine Chesney

DATE: November 20, 2020
TIME: 9:00 a.m.
LOCATION: San Francisco Courthouse
Courtroom 7- 19th Floor
450 Golden Gate Ave.
San Francisco, CA 94102

DECLARATION OF SAMUEL ROSENTHAL

Samuel Rosenthal declares:

1. I am a partner in the law firm of Nelson Mullins, Scarborough and Riley, LLP. I am counsel to Planet Aid in connection with the above-captioned lawsuit, and as such, have personal knowledge of the matters set forth below, except where otherwise indicated. This declaration is submitted in opposition to the Motion to Strike, see ECF 107, and pursuant to Fed.Rule 56(d).

2. Attached as Exhibit 1 is a true copy of the deposition of Amy Pyle in this action.

3. Attached as Exhibit 2 are true copies of the following deposition exhibits marked at the deposition of Amy Pyle in this action.

Exh.	Depo. Ex. No.	Beginning Bates No, ECF, etc.	Also marked as:	Description
2(a)	1-1 thru 1-31	Various		accounting records and emails.
2(b)	1-32	CIR 08249	Sullivan Ex. 12	correspondence from USDA to Tom Meehan.
2(c)	1-33	CIR 02051	Sullivan Ex. 8.	email from Ron Croushorn re Planet Aid.
2(d)	1-34	CIR 04446	Sullivan Ex. 14.	email from Erin Means dated May 6, 2013.
2(e)	1-35	CIR 41976		Email from Marie Lichtenberg to Brian Dutoi.
2(f)	3	https://www.spj.org/ethicscode.asp	Walters Ex. 11	SPJ Code of Ethics.
2(g)	4	CIR 45568	Smith Ex. 57.	HPP invoice for \$36,821.15.
2(h)	5	Revealnews.org		2014 bank statements hyperlinked to articles.
2(i)	6	CIR 26607		April 11, 2016 google docs communication.
2(j)	7	CIR 47013		Sept. 9, 2015 email from Smith to Pyle.
2(k)	31	Twitter.com		July 30, 2015 tweet from Amy Pyle re impact.
2(l)	33	Revealnews.org		revealnews.org page "About Us"

2(m)	34	CIR 36640		May 12, 2016 email from Pyle to Walters, et al. re anonymous tips.
2(n)	35	CIR-SR-000001		Jan. 30, 2015 email from Pyle re story.
2(o)	42	ECF 117-4, Ex F		invoice re school license fees.
2(p)	40	CIR 81999	Sullivan Ex. 9	March 2, 2016 email from Pyle to Sullivan.
2(q)	41	CIR 25749		March 24, 2016 email from Pyle to Salladay.
2(r), (s)		Intentionally blank		
2(t)		Authenticated by B. Phiri Decl.		Contract relating to Derrick Mpeta.

4. Exhibit 2(h) and 2(l), *supra*, were downloaded by me from revealnews.org. and were hyperlinked to the Defendants' stories at issue in this case. Exhibit 2(l) was downloaded by me from revealnews.org. Exhibit 2(k) was downloaded by me from twitter page of Any Pyle. Exhibit 2(f) was downloaded by me from the internet at spj.org/ethciscode.asp.

5. Attached as Exhibit 3 is a true copy of the deposition of Matt Smith, a defendant in this action.

6. Attached as Exhibit 4 is a true copies of the following deposition exhibits marked at the deposition of Matt Smith in this action:

Exh.	Depo. Ex. No.	Beginning Bates No, ECF, etc.	Also marked as:	Description
4(a)	28	ECF 116 Ex. D	Sullivan Ex. 4; Rosenthal Ex. 21	2013 spreadsheet.
4(b)	29	Revealnews.org	Sullivan Ex. 5; Rosenthal Ex. 22	2014 spreadsheet.
4(c)	40	CIR 42452		Email re Chiku Malabwe.
4(d)	33	CIR 07911		Log-Mon report.
4(e)	34	CIR SR 0134		email from Matt to Simon.
4(f)	35	https://www.nyasatimes.com/		news article re Ngwira.

		malawi-court-convicts-daily-times-journalist-ove extortion/		
4(g)	39	CIR 25635		google docs message from Matt Smith re Chiku Malabwe.
4(h)	36	Anti-corruption bureau		Anti- corruption bureau filing.
4(i)	41			email re interview request to Chiku from Matt Smith.
4(j)	45	CIR 23956		interview notes re Paol Gade.
4(k)	2	Revealnews.org		May 23, 2016 Article
4(l)	48	CIR 45785		Excerpt from Knud 18 transcript.
4(m)	49	CIR 42469		invoice.
4(n)	50	CIR 43579		Invoice.
4(o)	51	CIR 43577		email re Mpeta payment.
4(p)	52	CIR 42370		invoice.
4(q)	53	CIR 43581A		taxi receipt.
4(r)	32	CIR 45857		Knud 7 transcript
4(s)	56	CIR 43643		email between Smith and Ngwira re book translation.
4(t)	75	CIR 44610		email between Smith and Ngwira re Kajumi.
4(u)	76	Attached to declaration of Precious Kossamu		Bank deposit slips.

4(v)	64	CIR 39468		2008 draft audit statement
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7. Exhibit 4(f) was downloaded by me from the internet at nyasatimes.com/Malawi-court-convicts-daily-times-journalist-over-extortion. Document 4(h) was obtained by the undersigned from the Malawi government anti-corruption bureau from the official files of that agency. Exhibit 4(u) is addressed in the contemporaneously filed declaration of Precious Kossamu.

8. Attached as Exhibit 5 is a true copy of the deposition of Amy Walters, taken in this action.

9. Attached as Exhibit 6 are true copies of the following deposition exhibits marked at the deposition of Amy Walters:

Exh.	Depo. Ex. No.	CIR Beginning Bates No, ECF, etc.	Also marked as:	Description
6(a)	11	https://www.spj.org/ethicscode.asp	Pyle Ex. 3	SPJ Code of Ethics.
6(b)	12	Revealnews.org		Ethics Guide
6(c)	13	https://www.spj.org/ethics-papers-cbj.asp		SPJ Position Checkbook Journalism
6(d)	18	https://www.npr.org/2008/09/210615253/editors-note		NPR Editors Note.
6(e)	20	CIR 48391		Harrison Longwe interview transcription.
6(f)	44	CIR 70426	Smith Ex. 55	Mpeta interview.
6(g)	25	CIR 25635		Google docs message.
6(h)	41	ECF 78-22-40		Walters' tweets.
6(i)	32	CIR 03681		Log-Mon Report.
6(j)	33	CIR 07911		Log-Mon Report.
6(k)	38	78-22 at 5.		Walters tweet attached to FAC.
6(l)	39	78-22 at 33		Walters tweet attached to FAC
6(m)	40	CIR 24350		email re social media.

6(n)	42	CIR 36595	Rosenthal Ex. 13	Email from Sam Ward.
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10. Exhibits 6(a) through (d) were downloaded by me from the internet cites listed above. Exhibits 6(k) and (l) were downloaded from twitter.com

11. Attached as Exhibit 7 is a true copy of the deposition of Robert Rosenthal, taken in this action.

12. Attached as Exhibit 8 are true copies of the following deposition exhibits marked at the deposition of Robert Rosenthal:

Exh.	Depo. Ex. No.	Beginning Bates No., ECF, etc.	Also marked as:	Description
8(a)	5	ECF 235-7		E. Phiri Decl.
8(b)	13	CIR 36595	Walters Ex. 42	Email from Sam Ward to Robert Rosenthal.
8(c)	15	CIR 36845	Sullivan Ex. 23.	Google Docs message from Kevin Sullivan
8(d)	16	CIR 37446	Sullivan Ex. 25	Google Docs message.
8(e)	21	ECF 116, Ex. D	Smith Ex. 28; Sullivan Ex. 4; Rosenthal Ex. 21	Longwe Ex. D
8(f)	22	Revealnews.com	Smith Ex. 29; Sullivan Ex. 5; Rosenthal Ex. 22.	2014 spreadsheet

13. Attached as Exhibit 9 is a true copy of excerpts from the deposition of Deborah George, taken in this action. Exhibit 8(f) was downloaded from the cloud at revealnews.org, and was hyperlinked to Planet Aid story.

14. Attached as Exhibit 10 are a true copies of the following deposition exhibits marked at the deposition of Deborah George:

Exh.	Depo. Ex. No.	Beginning Bates No.	Also marked as:	Description
10(a)	10	CIR-DG-00125	Smith Ex. 30; Sullivan 20	George email to Sullivan, 7/16/15
10(b)	8	CIR-DG-00200	Sullivan 19	Pyle email, 5/28/15.
10(c)	14	CIR-DG-00071		Sullivan email, 6/12/15.

10(d)	18	CR-DG-000109		Pyle email, 8/12/15.
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15. Attached as Exhibit 11 is a true copy of excerpts from the deposition of Robert Salladay, taken in this action.

16. Attached as Exhibit 12 are true copies of the following deposition exhibits marked at the deposition of Robert Salladay in this action:

Exh.	Depo. Ex. No.	Beginning Bates No.	Also marked as	Description
12(a)	18	NGWIRA482	Smith Ex. 61; Pyle Ex.1-4.	2007 KPMG audit report
12(b)	11	CIR45568	Pyle Ex. 4	Federation invoice for reimbursement.
12(c)	13	CIR 002051	Pyle Ex. 1-33; Sullivan Ex. 8	Croushorn memo
12(d)	15	CIR 008249	Pyle Ex. 1-32; Sullivan Ex. 12.	Malawi close USDA I
12 (e)	19	CIR 25598	Sullivan 24	Salladay notes on draft

17. Attached as Exhibit 13 is a true copy of the deposition of Kevin Sullivan, taken in this action.

18. Attached as Exhibit 14 are true copies of the following deposition exhibits marked at the deposition of Kevin Sullivan in this action:

Ex.	Depo. Ex. No.	Beginning Bates No., ECF, etc.	Also Marked as:	Description
14(a)	2	CIR 008921		Final Agreement Evaluation
14(b)	3	ECF 117-4	Pyle Ex. 42	Cash deposit slips
14(c)	4	ECF 116, Ex. D.	Smith Ex. 28; Rosenthal Ex. 21	2013 spreadsheet
14(d)	5	Revealnews.org	Smith Ex. 29; Rosenthal Ex. 22.	2014 spreadsheet
14(e)	8	CIR 0002051		Croushorn memo
14(f)	9	CIR 81999	40	Pyle email to Sullivan
14(g)	10	ECF 112		Declaration of Kevin Sullivan in Support of Anti-SLAPP Motion
14(h)	11	CIR 0041057	Salladay 12	Sindelar letter
14(i)	12	CIR 0008249	Pyle Ex. 1-32.	USDA letter
14(j)	13	CIR 0000749		USDA reports

14(k)	14	CIR 0004446	Pyle Ex. 1-34.	Email re Compliance Review Report
14(l)	16	CIR 67141		Goggins field trip
14(m)	17	CIR 0004249		Email to Jared Burnett
14(n)	18	CIR-DG-00221		Initial radio script
14(o)	20	CIR DC-00125	George Ex. 10; Smith Ex. 30.	George email to Sullivan
14(p)	21	CIR-SR-0041		Sullivan email to Reber
14(q)	23	CIR0036845	Rosenthal Ex. 15.	Google Doc, March 4, 2016
14(r)	24	CIR0025598	Salladay Ex. 19.	Salladay email to Pyle
14(s)	25	CIR0037446	Rosenthal 16	Google Docs, April 8, 2016
14(t)	26	CIR0000362		Letter from Mozambique Govt.

19. Attached as Exhibit 15 is a true copy of Defendant CIR's Corrected Objections and Responses to Planet Aid's First of Interrogatories, provided by Defendant CIR in this action and produced by Defendants to the undersigned.

20. Attached as Exhibit 16 is a true copy of answers by Defendant CIR to Plaintiff Lisbeth Thomsen's Second Set of Interrogatories, provided by Defendant CIR in this action, and produced by Defendants to the undersigned.

21. Attached as Exhibit 17 are true copies of documents obtained by the undersigned in response to document requests propounded by Plaintiffs in this action. With the exception of exhibits 17(l) and (m), below, the documents contain bates number provided by Defendants when producing the documents.

Ex.	BeginningBates No.	Description
17(a)	CIR 40731	Email from Ngwira to Smith.
17(b)	CIR 37915	Google docs message from Pyle.
17(c)	CIR 44464	Email re Chiku Malabwe.
17(d)	CIR-SR-000557	Email re Goteka
17(e)	CIR 26219	Email re Berlinske
17(f)	CIR 50561	Retraction request

17(g)	CIR 50846	Second retraction request
17(h)	CIR 51580	Third retraction letter
17(i)	CIR 51645	Fourth retraction letter
17(j)	CIR 64817	Email from Alonge
17(k)	CIR-SR-0002	Attachment to CIR-SR-0001.
17(l)	Cassella production	1.15.2016 email from Smith to Cassella.
17(m)	Cassella production	4.8.16 email from Cassella to Smith
17(n)	CIR 41269	Emails from Smith to Junge, and to Ngwira
17(o)	CIR 37386	Google docs message from R. Rosenthal

22. All document included in exhibits in the above paragraphs and bearing the bates stamp prefix "CIR," CIR-SR," "CIR-DG" and/or "NGWIRA" are true copies of documents obtained by the undersigned from Defendants in response to requests to produce documents. Exhibits 17(l) and 17(m) were produced to the undersigned by Stefan Cassella pursuant to a subpoena duces tecum served upon him.

23. Attached as Exhibit 18 are true copies of social media downloaded which I caused to be downloaded from twitter.com, instagram.com and facebook.com:

Ex.	Date	Location	Description
18(a)		@amlwalters; instagram.com	Chief at the pump
18(b)	3/26/16	Twitter.com	Walters retweet
18(c)	3/23/16	Twitter.com	Newsy tweet
18(d)	3/23/16	Twitter.com	Fresh news tweet
18(e)	1/23	Twitter.com	Smith tweet
18(f)	3/17/16	Facebook.com	Walters facebook post.

24. The following are true copies of audio files which I caused to be created from audio files provided by Defendants in discovery, and which were marked at the deposition of Kevin Sullivan. I have listened to the audio files listed below, which contain exactly the same content as exist on those corresponding portions of the audio files produced by Defendants, without any alterations or deletions of the files, other than material either before or after the clips set forth below:

Deposition Exhibit No.	CIR identification	Speaker	Tape portion
36	CIR 20459	Mbachi Munthali Matt Smith	12:58 to 13:43
37	HL 2 090415	Harrison Longwe Matt Smith Amy Walters	3:48 to 5:46
30	Knud 18, 023895	Knud Haargard	00 to 1:35
32	Knud 7, 023888	Knud Haargard	33:18 to 34:27
33	Knud 7, 023888	Knud Haargard Matt Smith	49:32 to 49:55

25. Exhibits attached to the First Amended Complaint as Exhibits A-E, B-I, N-Pre downloaded by me from revealnews.org. I caused Exhibit R to the FAC to be downloaded from <https://www.kcrw.com/news/shows/press-play-with-madeleine-brand/opening-statements-in-paul-tanaka-trial-and-running-and-eating-through-los-angeles/how-does-planet-aid-use-your-old-clothing>. I caused Exhibit S to the FAC to be downloaded from <https://www.nbcwashington.com/news/local/behind-the-bins-what-did-planet-aid-do-with-your-taxpayer-dollars/62537/>.

26. This declaration is also submitted pursuant to Fed.R.Civ.P. 56 (d). Plaintiffs have been unable to obtain discovery from several key sources proffered by Defendants, and therefore have been unable to address facts set forth in declarations from those individuals. Incorporated herein is ECF 166, 167, 189 dealing with this issue. It is reasonably believed that if discovery were permitted, it would show that statements contained in the declarations of the individuals set forth below are false in many material respects, or that other critical facts exist warranting denial of Defendants' motion. To the extent that declarations of Smith and Walters repeat, or reference statements of those individuals throughout their declarations, it is believed that additional discovery would show the falsity of their declarations as well. Set forth below are examples of facts believed to be critical to the Plaintiffs' opposition to Defendant's motion:

27. The first such individual is Kandani Ngwira. Plaintiffs have sought unsuccessfully through Defendants' counsel, who also represents Ngwira, to obtain

discovery from him. It is reasonably anticipated that if called to testify, Ngwira could confirm that following facts;

- Statements in his declaration are false.
- Sources were paid money for information. See Emmanuel Phiri Decl. Others were given money despite Ngwira's assertion that two were paid "nothing whatsoever," compare ECF 115, ¶ 20, or others paid "strictly" upon receipts. *Id.* See Phiri Decl., ¶¶ 88-100. Yet others were offered well pumps or material. See Chibwana Decl., ¶¶ 8-9. Based on the foregoing evidence, Plaintiffs have a good faith belief that Ngwira would admit that such improper payments and offers were made. Because Defendants have denied that they were aware of any such payments or offers, the only one who can confirm such facts is Ngwira. This fact is of critical importance since, as Defendants' Executive Director testified, if true, the facts set forth in Emmanuel Phiri's declaration, or others alleging they were offered inducements, would "call into question Reveal's reporting generally." See R.Rosenthal Depo. Tr. at See Rosenthal Depo. Tr. at 130:9 to 131:19; 136:7-16; 161:5-11.
- Ngwira can testify to also offers of recoveries to sources under the False Claims Act on the theory that they were acting as "whistleblowers." See Ex. 6(f), *supra*. (Ngwira telling a witness that he needed to "come on strong" in the interview to share in a recovery under the False Claims Act). In another document, Mr. Ngwira acknowledged his understanding that one witness, Chiku Malabwe, would likely help them in their interview, and again referred to the False Claims Act recovery as being a motivating force. *See infra*, Ex. 17(c). Testimony is required from Ngwira because Smith could not recall whether there were conversations with other sources about the False Claims Act. See Smith Depo. Tr. at 407:17 to 408:2. This fact is also of critical importance given testimony by CIR's Executive Editor that any such offers would have been highly improper and called into question the reporting. *See supra*.
- Unless Ngwira is asked to testify, there is no one who could testify to other individuals and documentary sources obtained by Ngwira since Defendants claimed that they could not recall either documents reviewed by them, see, e.g., Ex. 16, *supra* (Interrog. Answ. 15, 16), Walters Depo. Tr. at 353:6-11, 37:22 to 371:4; Smith Depo. Tr. at 345:22 to 346:7; or individuals. Walters Depo. Tr. at 217:1-10; 235:12-236:1.
- Ngwira would also testify that they had done nothing to corroborate other facts, even though Defendants recognized that such corroboration was required. For instance, Smith told Ngwira that they needed to corroborate information about fabricated invoices relating to book translations. See Ex. 4(t), *supra*. Smith claimed that he had no recollection of having obtained the information, see Smith Depo. Tr. at Smith Depo. Tr. at 431:9-19, necessitating Ngwira's testimony on that issue.

28. Harrison Longwe. Mr. Longwe was one of the key sources identified by Defendants. It is reasonably believed that, if deposed, Mr. Longwe would admit the following facts:

- Statements in his declaration are false.
- That he was unaware of anything done by Planet Aid and/or DAPP Malawi which was fraudulent per se, but only things which he felt were “unusual,” which he expressed to Defendants. See Ngunde Decl. (10/13/2018), ¶ 26.
- Longwe would testify that there are numerous factual errors and mistakes contained in his declaration, as set forth in the Declaration of Bruce Phiri, and that he communicated facts to Defendants relating to such errors and mistakes. Longwe would also confirm that various facts set forth in his declaration were never communicated to Defendants.
- Longwe would acknowledge that it was erroneous for him to allege in the statement included in the Podcast that 70% of USDA funds were siphoned away, see Podcast at 39, which was based on an erroneous assumption on his part, see Ex.6(e), *supra*, and that had he been aware of the correct assumptions, he would not have concluded that 70% of the funds had been siphoned away.
- The accounting records in Defendants’ possession contained an accurate accounting of all income and expenses on the USDA projects. See B. Phiri, Meehan Decl., and that he communicated those facts to Defendants. Mr. Longwe would admit also that Defendants had in their possession sufficient documentation showing that there was a proper accounting for all funds provided by the USDA.

29. Marko Zebiah is another critical witness who provided a declaration in support of Defendants’ motion. It is anticipated that if Zebiah were to testify, he would establish the following facts:

- Statements in his declaration are false.
- It was false to allege in his declaration that that he saw no benefit from the USDA Farmers’ Club Program. See ECF 117, ¶¶ 24-25, Zebiah told Defendants that he believed that Farmers’ Club yields where he was an instructor substantially increased. See Kachara Decl. ¶5.
- It was false to publish a statement that individuals interviewed by Defendants contributed 20-100% of their salaries to the Teachers Group. It is reasonable to assume that Zebiah will testify that he made no such statement to Defendants. Zebiah also would authenticate bank records confirming that no

1 such amount had been contributed by him or anyone else in his group, as well
 2 as additional records indicating that money contributed by him ended up in
 an account in Zebiah's name. See O. Thomsen Decl., ¶¶ 8-12.

- 3 • Zebiah and others received more money from Lisbeth Thomsen and others
 4 than they had contributed to the Teachers Group. See O. Thomsen Decl.

5 30. Another individual who provided a declaration but who refuses to be deposed
 6 is Patrick Goteka. It is reasonably anticipated that if called to testify Mr. Goteka would
 7 provide the following facts:

- 8 • Statements in his declaration are false.
- 9 • He never told Defendants that at least half the US Government funds provided
 10 by the USDA had been fraudulently siphoned away, diverted or stolen.
- 11 • It is reasonably believed that Goteka would testify that he made Defendants
 12 aware that what they were publishing relating to his contributions, and those
 13 of others to the Teachers Group, were false based on documents which he
 showed to them reflecting that he and others had made only nominal
 contributions.
- 14 • It is also reasonably believed that Goteka would testify that Defendants were
 15 aware that it was false to allege that he had told them that at least half the US
 16 government funds were being fraudulently siphoned away, see Podcast at 39,
 since made no such statement.
- 17 • Goteka would also testify that he was provided substantial benefits in return
 18 for helping Defendants. It is reasonably believed that if he were deposed he
 19 would testify that he was paid \$800 to relocate, see Ex. 17(d), *supra*, he was
 20 offered a new computer to replace his broken one, and that all expenses were
 paid for him while in Malawi while meeting with Defendants. Goteka would
 also be able to testify that he sought additional substantial benefits, including
 assistance in relocating to the United States.
- 21 • Goteka would also testify that he falsified the story about being in fear for his
 22 life, which was based in large part on the allegation that there was a car behind
 23 him while in Malawi. See ECF 126, ¶ 57. Goteka would testify that he knew
 24 perfectly well that it was a friend of his, Kumbukani Mataka, see Mataka
 Decl., and that Goteka had absolutely no fear of being harmed by this
 individual, who he knew extremely well.
- 25 • While claiming that money was "forcefully" taken from his salary by
 26 Charlotte Danckert and Lisbeth Thomsen, it is reasonably believed that Mr.
 27 Goteka would acknowledge based on documentary evidence that this
 28 allegation is false and that he requested that the withdrawal in question be
 given to him as a loan. See L. Thomsen Decl., ¶ 82.

- Mr. Goteka's duties as "campus manager" at the Amalika school did not include any responsibility for overseeing the USDA Program in Malawi. It is also anticipated that if called to testify that he had no role in any donor audits or reviews, and was unaware of any audit at Amalika school, as no such audit occurred or was contemplated, and that he had told Defendants such facts.
- Goteka was unaware of any decision or action by Amdi Petersen regarding the USDA programs, including the use of funds obtained from the USDA.
- Goteka was unaware of any finances regarding Jacaranda farm in Malawi, as he was a visitor at that farm for a total of a few weeks prior to returning home to Zimbabwe.

31. Finally, defendants have submitted a declaration from Mbachi Munthali. Defendants believe that if called to testify Ms. Munthali would testify as follows:

- Statements in her declaration are false.
- Munthali would testify that she was unaware of any facts regarding the USDA program in Malawi, and had no recollection of there even having been a USDA program, and made Defendants aware of such facts. *See* Sullivan Tr. at 214:11 to 216:17. It is also believed that she would testify that she made Defendants aware that the policies and procedures referenced in her declaration pre-existed her employment, and that she had no knowledge of what procedures were used in the USDA program.
- She would also testify that Defendants were made aware by her that because she was given no responsibilities or duties regarding any other donor program, *see* ECF 119 ¶5a, she was unaware of any misuse of funds regarding any such program, and made Defendants aware of such facts. Further, because Ms. Munthali did not access procurement documents, *see* ECF 119, ¶5c, she had no personal knowledge as to what procedures or protocols were existing as to any purchases.

32. Plaintiffs have made a diligent effort to obtain the testimony of each of the foregoing individuals. *See* ECF 166, 167, 189. As to Ngwira, Defendants repeatedly indicated for over a year that they would accept service of a subpoena for Ngwira. ECF 189 at 2. Plaintiffs have sought Ngwira's testimony through letters rogatory, which has failed to result in obtaining his testimony. As reflected in prior filings, it is extremely unlikely that those letters rogatory will succeed in obtaining Ngwira's testimony at any point. *See* ECF 166, 189.

1 33. As to Zebiah and Longwe, Defendants have made repeated efforts to contact
2 them directly. As this Court is aware from prior motions practice, both individuals have
3 refused to respond to frequent requests for them to participate in discovery. As to Patrick
4 Goteka, Defense counsel provided contact information who presumably could communicate
5 with Goteka. See ECF 189. Repeated efforts to contact Goteka through the contact
6 information provided by defense counsel has proved fruitless. *Id.*

7 34. As to Munthali, the undersigned was prohibited by ethics rules from
8 contacting her directly since she was an adverse party represented by counsel as a result of
9 litigation with DAPP Malawi. The undersigned attempted to obtain discovery from her by
10 contacting her counsel identified in pleading filed by her in a lawsuit against DAPP Malawi.
11 No response was received from Ms. Munthali or her counsel.

12 35. As to Innocent Chitosi, the undersigned, along with local counsel for
13 Plaintiffs, repeatedly attempted to reach Mr. Chitosi, including leaving call back information.
14 See Ngunde Decl., ¶ 8. Mr. Chitosi failed to return any calls or communicate with the
15 undersigned or counsel in Malawi.

16 36. As to Harrison Longwe, the undersigned was able to begin an interview of
17 him in Malawi, prior to the lawsuit being filed. As reflected in the declaration of Chrispin
18 Ngunde, filed in opposition to the Defendants' motion to strike, Mr. Longwe refused to
19 continue the interview and got up and walked away. See Ngunde Decl., ¶ 7. As reflected in
20 prior motions practice, the undersigned has made several attempts to reach him. As reflected
21 in prior filings, Mr. Longwe advised that he has no intention of participating in discovery, or
22 providing any information as to the truthfulness of his declaration.

23 37. There is little likelihood that Plaintiffs will be able to obtain testimony from
24 any of the above individuals. As to Ngwira and Munthali, because they are represented by
25 counsel, it would be unethical for Plaintiffs' counsel to contact them directly. As to all of
26 the above individuals, Ms. Thomsen has made a diligent effort to see whether individuals
27 known to her may be able to convince the above witnesses to cooperate in discovery. All
28 such efforts were unsuccessful.

1 38. When all other efforts to secure the testimony of the above witnesses failed,
2 Plaintiffs attempted to secure the assistance of the State Department through letters rogatory.
3 See ECF 269. It is unlikely that those efforts will result in being able to depose any of the
4 individuals in question. As explained in our previous filings, Defendants have refused to
5 provide adequate addresses that would have allowed Plaintiffs or the Government of Malawi
6 to serve those individuals with any process. Also, because Malawi is not a member of the
7 Hague convention, any effort to obtain testimony from any of the five is bound to fail.
8 Although a request has been made to the State Department for issuance of letters rogatory,
9 there is little likelihood that this will succeed in securing their testimony, and Defendants
10 have resisted even providing sufficient information with which to locate or serve any of them.
11 By way of example, Patrick Goteka claims to be in hiding, and Defendants refuse to provide
12 any information that would allow proper service.

13 39. Ms. Thomsen has also made a diligent effort to secure cooperation from
14 individuals in question, and attempted to locate individuals who might be in a position to
15 implore them to participate in discovery. To date, none of those efforts have been successful.

16 40. I state under penalty of perjury under the laws of the United States of America
17 that the foregoing is true and correct.

18 Executed on: September 21, 2020

/s/ Samuel Rosenthal
Samuel Rosenthal